

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALEXANDER A. BENNETT,	§
	§
Defendant Below-	§ No. 178, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0801023758
Plaintiff Below-	§
Appellee.	§

Submitted: May 4, 2009  
Decided: June 15 , 2009

Before **HOLLAND, BERGER**, and **JACOBS**, Justices.

**ORDER**

This 15<sup>th</sup> day of June 2009, it appears to the Court that:

(1) On March 27, 2009, the Court received Alexander Bennett’s pro se notice of appeal from a Superior Court sentencing order entered on February 4, 2009. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before March 6, 2009.

(2) The Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing Bennett to show cause why the appeal should not be dismissed as untimely filed.<sup>1</sup> Bennett, through his trial counsel, filed a

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<sup>1</sup> Del. Supr. Ct. R. 6 (a) (ii).

response to the notice to show cause asserting that his trial counsel never informed him that he had only thirty days to file an appeal. Bennett's trial counsel did not dispute Bennett's assertion but merely requests that the delay in filing a timely appeal be excused in Bennett's case. The State has filed a reply, suggesting that, under the circumstances, this matter be remanded to the Superior Court to determine whether Bennett expressed a desire to appeal to his trial counsel. If the court so finds, then the State suggests that the Superior Court re-impose Bennett's sentence in order to reset the clock on Bennett's time to appeal.

(3) Time is a jurisdictional requirement.<sup>2</sup> A notice of appeal must be received by the Office of the Clerk of this Court within the applicable time period in order to be effective.<sup>3</sup> Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered.<sup>4</sup> Trial counsel is not "court-related personnel." Accordingly, the Court cannot, as Bennett's counsel requests, simply discharge the notice of appeal and excuse his untimely filing.

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<sup>2</sup> *Carr v. State*, 554 A.2d 778, 779 (Del.), *cert. denied*, 493 U.S. 829 (1989).

<sup>3</sup> Del. Supr. Ct. R. 10 (a).

<sup>4</sup> *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

(4) In part, we agree with the State that the proper course of action is to remand this matter to the Superior Court.<sup>5</sup> Upon remand, the Superior Court should resentence Bennett to permit his counsel the opportunity to file a timely appeal. Resentencing shall take place upon notice to the parties as soon as practicable but no later than 30 days from the date of this order.

NOW, THEREFORE, IT IS HEREBY ORDERED that the within matter is REMANDED to the Superior Court for further action in accordance with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>5</sup> See: *Sheeran v. State*, 526 A.2d 886, 888 (Del. 1987). In *Braxton v. State*, 479 A.2d 831 (Del. 1984), this Court noted that an alternative approach would be a motion for post-conviction relief.